IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTON

CHAMBER SUMMONS NO. 1298 OF 2006

IN

CHAMBER SUMMONS NO. 203 OF 2005

IN

EXECUTION APPLICATION (LODG) NO. 96 OF 2005

IN

AWARD DATED 18TH MARCH, 2002

Mr.Ashok Kumar Agarwal ....Applicant
vs.
Mr.Ramjivan Saraf ....Respondent
Mr.Dharamveer Poonia ....Applicant.

S.A.Sawant with Samir Suryavanshi

for the applicants.

Mr. Dinesh C.Shah i/by.S.C.Swami

for the claimants.

Mr.A.M.Sarogi with A.S.Chaurasia

for respondents.

CORAM: S.J.VAZIFDAR, J.

24TH NOVEMBER, 2006.

P.C. :

1. The applicant has taken out this Chamber

Summons to recall an order dated 7/2/2006 passed by me in Chamber Summons No. 203 of 2005 in Execution Application (L) NO. 96 of 2005.

2. The applicant has an award in his favour in the sum of about Rs.5 lacs. He therefore filed the above Execution Application. In that application, he took out the above Chamber Summons No. 203 of 2005 and by the order dated 7/2/2006 I recorded the respondent/debtors statement that he had no objection to the appointment of Court Receiver only to take formal possession.

3. The present applicant (described as the appellant) is a third party to whom the property against which execution is sought to be levied had already been sold.

4. The present applicant purchased the flat by an agreement dated 24.7.2002 from the respondent for a consideration of Rs.14,75,000/-. The entire amount had been paid to the applicant. As the society had not granted the NOC accepting the present applicant

as a member, proceedings were adopted before the Registrar of Co-operative Societies under Section 79(2) of the Maharashtra Co-operative Societies Act. That application was allowed by an order dated 9/1/2006.

5. Thereafter the respondent had filed a suit in the City Civil Court being S.C.Suit No. 4 54 6 of 2002 seeking to challenge the said agreement dated 24.7.2002. An order in terms of the consent terms was passed on 3.9.2002 by which, the respondent inter-alia confirmed the agreement dated 24.7.2002. The term also provide that possession would be handed over to the applicant. Infact the present applicant's case is that he has been in possession since July 2002 itself. That appears to be so. The clause in the consent terms was in all probability only a formal clause. In any event possession was admittedly handed over prior to the order dated 7/2/2006 sought to be set aside. Further the society by its letter dated 6/2/2006 confirmed that it had given effect to the order of the Registrar of Co-operative Societies dated 7/2/2006 accepting the

present applicant as the member.

6. The present applicant was made aware of the order dated 7/2/2006 only when the Court Receiver visited the premises to execute the same.

7. Thus the respondent had no subsisting right, title and interest inrespect of the flat against which execution could have been levied by the original applicant/decree holder.

8. In the circumstances, there is absolutely no case for levying execution against the flat which now clearly belongs to the present applicant.

9. In the circumstances, the Chamber Summons is made absolute in terms of prayer clause (a). The Court Receiver is hereby discharged. The respondent shall pay to the present applicant costs fixed at Rs.5,000/- within four weeks from today.

10. Mr. Sawant states that for a period of two weeks from today, the present applicant will

maintain status-quo in respect of the suit flat.

sd/-

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